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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,108	06/30/2003	Hirotake Ando	03560.003330	1047
5514 7590 03/08/2007 FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			EXAMINER PHAM, VAN T	
			ART UNIT 2627	PAPER NUMBER
			MAIL DATE 03/08/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/608,108

Applicant(s)

ANDO, HIROTAKE

Examiner

VAN T. PHAM

Art Unit

2627

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 27 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

WAYNE YOUNG  
SUPERVISORY PATENT EXAMINER

Continuation of 3. NOTE:

Claims 1-22 have been cancelled and newly added claims 22-43 change scope of these claims which raise the new issues require further consideration and/or search.

However, in response applicant asserted "the patent (Yoshimoto et al.) is not understood explicitly disclose the claimed circuit configured to control rotation of the optical disk by changing a rotation frequency thereof. Therefore, this patent is not understood to disclose or suggest a circuit configured to adjust a servo-loop gain of tracking or focus servo control in accordance with the change of the disk rotation frequency, as required by claims 22 and 33", are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The limitation "a circuit configured to control rotation of the of the optical disk by changing a rotation frequency thereof" and "a circuit configured to adjust a servo-loop gain of tracking servo control in accordance with the change of the disk rotation frequency" are never cited in the claims. However, Claims 1 and 12 (filed 06/30/2003) cited "an optical information reproducing apparatus for recording or reproducing information on/from an optical disk using an optical spot, and which controls rotation of the optical disk so as to provide a constant linear velocity by changing a rotation frequency in accordance with a radial-direction position of the optical spot" are in preamble. Noted those limitations have not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

However, the rejected claim 1 (filed 06/30/2003 and 10/25/2006) cited "a tracking control circuit that adjust a servo-loop gain for tracking servo in accordance with the change of the rotation frequency". And Yoshimoto discloses in FIG. 9 the optical disk drive includes means for rotating an optical disk medium, an optical head for directing a light beam reflected from the optical disk with a linear motor 46 provides coarse movement in the radial direction on a constant speed; and also the tracking signal varies in frequency during seeking in accordance with the optical head velocity. Also, col. 2, lines 55-64 discloses the optical disk drive includes means for rotating an optical disk medium. Therefore, the rotation frequency is inherently. Moreover, a linear motor 46 provides coarse movement in the radial direction and by designating regions in the radial direction by track group numbers and regions in the circumferential direction by sector group numbers, the map of the optical disk medium can be expressed by the following matrix. (1) Map=(number of track groups, number of sector groups) (16) where the number of track groups is less than or equal to the number of tracks or the maximum number of notches of external scale, and (17) is less than or equal to the number of sector groups is less than or equal to the number of sectors in the circumferential direction or the number of rotary pulses of the disk drive motor, which means the tracking servo control in accordance with the change of the rotation of the disk.